

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 230 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJ

Versus

MOHANLAL VASARAM

Appearance:

MR SR DIVETIA APP for Petitioner
MR VT ACHARYA for Respondent No. 1
SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 24/04/97

ORAL JUDGEMENT

The Electrical Inspector of the State of Gujarat has preferred the present Special Criminal Application No. 230 of 1989 against the order of the Additional

Sessions Judge, Ahmedabad {Rural} in Criminal Revision Application No. 58 of 1988, passed on 10th January, 1989.

2. The present petitioner has filed Criminal Case No. 1945 of 1987 against the respondent No. 2 alleging in the said complaint that the respondent No. 1 and others had formed a Cooperative Housing Society and built houses below the high voltage electricity lines of 33000 and 11000 volts overhead lines of the Gujarat Electricity Board and that though he had been served with a notice under rule 82 of the Indian Electricity Rules, 1956, they had not removed the said house. He, therefore, had lodged the said complaint alleging that they had committed an offence punishable under rule 140 of the Indian Electricity Rules as well as Section 47 of Indian Electricity Act. The respondent No. 1 gave an application before the learned Judicial Magistrate First Class containing therein that in view of the provisions of Section 468, the prosecution in question was time-barred and hence the case should be quashed.

3. The claim of the respondent was resisted by the present petitioner by contending that the respondent had committed a continuing offence and that as the offence was continuing one, the prosecution could not be said to be barred by law of limitation. The learned Judicial Magistrate First Class had found favour with the contentions raised on behalf of the present applicant and rejected the said application by holding that the offence alleged against the respondent was a continuous offence.

4. Being felt aggrieved by the said decision, the respondent preferred revision application in the Sessions Court at Ahmedabad. The said Criminal Application No. 58 of 1988 was heard by the learned Addl. Sessions Judge and he allowed the said revision application by holding that the prosecution in question was barred by law of limitation as the complaint was not lodged within the prescribed period, as provided by Section 468 of the Act.

5. There is no dispute to the fact that the house in question is constructed under the high voltage lines of Gujarat Electricity Board. It is also an admitted fact that before raising the said construction, no notice under Rule 82 of the Indian Electricity Rules, 1956 was served by the respondent or the person who constructed the said house, on the present revision applicant. Rule 82 of the Indian Electricity Rules, 1956 provides that when a person proposes to erect a new building under the overhead high voltage electricity line/s, he must serve a

notice alongwith sketch or drawing of the proposed building on the Inspector concerned. Rule 77 and 80 lays down certain specifications for leaving open space between the construction and overhead line. Rule 82 is provided with a view to enable the Electricity Board or the Licenser to take appropriate steps to change the overhead line, if the same is necessary for the purpose of complying with the provisions of the Rules and the persons serving the notice is then to bear the costs of change of line. Now in the instant case, the only grievance against the respondent is that respondent had not served the notice under rule 82. The construction by respondent is admittedly under high voltage overhead line. It is not the claim that the said construction is not leaving open space as provided by Rule 80.

6. Now admittedly, the respondent was served with a notice after the building was constructed and after he had started occupation of the said building. That notice was served in the year 1984 by the present revision applicant and the present prosecution was lodged on 8th May, 1987. If the provisions of Section 47 of the Indian Electricity Act, 1910 as well as Rule 140-A of the Indian Electricity Rules, 1956 are considered, then the sentence for non-service of notice under rule 82 is only of fine. Therefore, in view of provision under Section 468 the time limit for filing complaint is only six months from the date of offence or knowledge of commission of offence. But the complaint is filed after more than three years from the knowledge of the commission of offence.

7. It is vehemently urged before me by Mr. Divetia that the learned Magistrate of the trial Court was quite justified in holding that the offence is continuous one. He also drew my attention to the provisions of Rule 140A and contended that the offence committed by the revision applicant will have to be held as continuous one and for that purpose, he heavily relied on the provisions of Rule 140A. That rule 140-A is running as under:-

"140-A. Penalty for breach of Rules 77, 79 or 80

- Where a person is responsible for any construction which is or which results in contravention of the provisions of Rules 77, 79 or 80, he and the contractor whom he employs shall be punishable with a fine which may extend to three hundred rupees, and in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

8. Nodoubt, rule 140A is providing for punishment for continuous offence. Whether offence is continuous one will be depending upon the facts of the case. Suppose, if the Electrical Inspector had found that construction was being carried out without serving notice under Rule 82 and if he serves upon a notice on the person making the construction and inspite of the service of the said notice, if the construction continues, then that would amount to continuous offence. But in the instant case, the notice is served after construction in question was completed. The revision applicant had served notice on 8th August, 1982 when the building in question was completed and the respondent had started occupying the same. The construction had been concluded without following the procedure of Rule 82, and therefore, in the circumstances it could not be said that offence was continuing one. Neither Rule 82 nor Rule 77 nor Rule 80 of the Indian Electricity Rules lays down that the construction below the overhead high voltage line is prohibited. All these rules are laying down certain conditions. Rule 80 lays down condition of allowing specific open space between the building and the overhead line. Rule 82 provides for service of the notice to Inspector concerned before starting construction but there is no rule which prevents the very construction. Failure to serve a notice will have its consequences and the consequences would be as provided under Rule 140A as well as Section 47. The offence would be continuous one only in case if inspite of the objection raised by the Electrical Inspector, the construction continues. The construction is already over, the offence is concluded. I, therefore, hold that the conclusion to which the learned Additional Sessions Judge has arrived at is proper and correct. I, therefore, reject this Special Criminal Application. Rule discharged.

Prakash*